

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 23-mc-80743-Middlebrooks-Matthewman

IN RE APPLICATION OF
ORTHOGEN INTERNATIONAL GmbH,

Petitioner,

For an order pursuant to 28 U.S.C. § 1782
to conduct discovery for us in a foreign proceeding(s)

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**PROPOSED INTERVENOR DOUGLAS SCHOTTENSTEIN, M.D. AND
SCHOTTENSTEIN PAIN AND NEURO, PLLC D/B/A/ NY SPINE’S RESPONSE TO
THE CAPLA MOTION FOR A STAY**

Douglas Schottenstein, M.D. and Schottenstein Pain and Neuro, PLLC d/b/a/ NY Spine (“intervenor”) through their attorneys, The Law Offices of Cory H. Morris, Cory H. Morris, P.C., an attorney duly admitted to practice in New York and Florida Courts respectfully state:

1. I am attorney of record for Douglas Schottenstein, M.D. and Schottenstein Pain and Neuro, PLLC d/b/a/ NY Spine who are the potential (or actual) defendants in a German Proceedings that is/are the object of petitioner’s application in the instant case.

2. Intervenor do not oppose a stay of the proceedings [D.E. 44] to, *inter alia*, conserve judicial resources and avoid inconsistent determinations across the United States District Courts.

A Stay will Not Prejudice Petitioner

3. As stated in Petitioner’s Memorandum of Law in Support of the Ex Parte Application for an Order Pursuant to 28 U.S.C. § 1782 [D.E. 3] (hereinafter “Orthogen MOL”), Orthogen plans to file suit in Germany based on the underpayment of royalties from Edward Capla and Douglas Schottenstein, M.D. (Schottenstein Pain and Neuro, PLLC d/b/a/ NY Spine). See. D.E., P. 1.

4. Schottenstein Pain and Neuro, PLLC d/b/a/ NY Spine is the corporate entity through with Dr. Schottenstein operated his medical practice for the Regenokine license agreements entered

into with Petitioner, Orthogen International GmbH (hereinafter “Orthogen”) that are discussed at length in the Orthogen MOL in support of its Ex Parte Application for an Order pursuant to 28 U.S.C. § 1782.

5. As set out in the Memorandum of Law in Support of Ex Parte Application for a Discovery Order Pursuant to 28 U.S.C. § 1782 [DE 3] at page 3, the purpose of the subpoenas served on Deponents is to “develop ... facts for purposes of [a] Contemplated German Proceeding” that Orthogen International intends to initiate ... against Mr. Capla and Dr. [Douglas] Schottenstein in Germany....” *Id.*

6. Petitioner, Orthogen, filed a separate Application for an Order Pursuant to 28 U.S.C. § 1782 against Douglas Schottenstein (intervenors) in S.D.N.Y. Case No. 1:23-mc00152-VSB. See, e.g., Reply Memorandum in Support of Objections to Subpoenas Duces Tecum [DE 26] at page 2 and the appended Supplemental Declaration of Dr. Stefan Kruger in in S.D.N.Y. Case No. 1:23-mc-00152-VSB at DE 26-1.

7. Douglas Schottenstein, M.D. and Schottenstein Pain and Neuro, PLLC d/b/a/ NY Spine are Plaintiffs in the case of *Schottenstein et al v. Capla et al*, 22-cv-10883-PKC (S.D.N.Y.) wherein Edward Capla, Yolanda Capla and Orthogen are named Defendants and all of the discovery Petitioners seek is likely to be sought if not received in the New York action.

8. After the filing of *Schottenstein et al v. Capla et al*, 22-cv-10883-PKC (S.D.N.Y.), Orthogen filed an almost identical 28 U.S.C. § 1782 action against intervenors here, Douglas Schottenstein, M.D. and Schottenstein Pain and Neuro, PLLC d/b/a/ NY Spine, and the Southern District of New York 28 U.S.C. § 1782 action requests the same categories of documents as requested in the instant case and seeks the deposition of Dr. Schottenstein.

Issuance of a Stay will Conserve Judicial Resources

9. A stay will allow outstanding issues to be resolved across multiple litigations to avoid duplicative discovery and promote preservation of party, lawyer and, most importantly, judicial time and resources in what may become inconsistent legal or factual findings without, *inter alia*, consolidation.

10. I hereby certify that I conferred with counsel for all parties and, while they may object to a stay, they do not object to Douglas Schottenstein, M.D. and Schottenstein Pain and Neuro, PLLC d/b/a/ NY Spine's participation herein.

DATED AT: Central Islip, NY
November 13, 2023

/s/ Cory H. Morris /s/
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